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9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11

12 WILLIAM WIESE, an individual;  
13 JEERMIAH MORRIS, an individual;  
14 LANCE COWLEY, an individual;  
15 SHERMAN MACASTON, an  
individual; ADAM RICHARDS, in his  
16 capacity as Trustee of the Magazine  
Ban Lawsuit Trust; CLIFFORD  
17 FLORES, individually and as trustee of  
the Flores Family Trust; L.Q. DANG,  
18 an individual; FRANK FEDEREAU, an  
individual; ALAN NORMANDY, an  
19 individual; TODD NIELSEN, an  
individual; THE CALGUNS  
20 FOUNDATION; FIREARMS POLICY  
COALITION; FIREARMS POLICY  
21 FOUNDATION; and SECOND  
22 AMENDMENT FOUNDATION,

23 Plaintiffs,

24 vs.

25 XAVIER BECERRA, in his official  
26 capacity as Attorney General of the  
State of California; and DOES 1-10,  
27

28 Defendants.

Case No. 2:17-903 WBS KJN

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR LEAVE TO  
PARTICIPATE AS *AMICUS  
CURIAE***

Hon. William B. Shubb

Date: June 29, 2017

Time: 9:00 a.m.

Location: Courtroom 5, 14<sup>th</sup> Floor

1       **I. INTRODUCTION**

2           The Law Center to Prevent Gun Violence (“Law Center”) moves this Court  
3 for leave to participate as an *amicus curiae* in support of Defendant Attorney  
4 General Xavier Becerra’s Opposition to Plaintiffs’ Motion for a Preliminary  
5 Injunction. As a national, nonprofit organization dedicated to reducing firearm  
6 violence, the Law Center has for over two decades provided legal expertise in  
7 support of effective gun safety laws and other violence prevention policies.

8           In addition to its expertise in the general areas of gun legislation and policy,  
9 the Law Center was the primary drafter and a key proponent of California’s  
10 Proposition 63, the ballot initiative approved by voters and enacted into state law  
11 that contains a provision generally prohibiting civilian possession of large-capacity  
12 ammunition magazines (LCMs). This is the provision that Plaintiffs seek to enjoin  
13 before it takes effect on July 1, 2017. The core issue presented by Plaintiffs’  
14 Motion—whether to enjoin California’s law prohibiting possession of high-powered  
15 ammunition magazines on Second Amendment or other constitutional grounds—is a  
16 matter of significant public interest, with the potential to directly impact the Law  
17 Center’s California members, the voters who approved Proposition 63, and the  
18 people of the state as a whole. Under these circumstances, an *amicus curiae* brief is  
19 particularly appropriate, and the Law Center respectfully requests that the Court  
20 grant its motion for leave to submit its proposed brief.

21       **II. FACTUAL BACKGROUND**

22           As explained in greater detail in its proposed brief (filed concurrently with  
23 this motion), the Law Center is a national, nonprofit organization dedicated to  
24 reducing gun violence. It was formed in 1993 by lawyers who survived a mass  
25 shooting at 101 California Street in San Francisco, during which a gunman armed  
26 with semiautomatic weapons and LCMs killed eight people in the office of law firm  
27 Pettit & Martin. In the nearly 25 years since, the Law Center has strived to reduce  
28 the number of gun deaths in America by supporting effective gun safety laws. In

1 addition to tracking, analyzing, and advising on proposed firearm legislation and  
2 policies, the Law Center also monitors and analyzes Second Amendment litigation  
3 and jurisprudence. The Law Center has submitted *amicus* briefs in numerous  
4 firearm-related and Second Amendment cases, including: *District of Columbia v.*  
5 *Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010),  
6 *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015), *Peruta v. San Diego*, 824  
7 F.3d 919 (9th Cir. 2016) (en banc), and *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir.  
8 2017) (en banc).

9 As a drafter and proponent of Proposition 63, the Law Center has a  
10 particularly important interest in participating in this constitutional challenge to part  
11 of the initiative. The Law Center’s involvement with Proposition 63 began in 2015  
12 when the Law Center partnered with California Lieutenant Governor Gavin  
13 Newsom to draft language for a statewide ballot initiative that would close certain  
14 loopholes and substantially strengthen California’s firearm laws. The result was  
15 Proposition 63, a comprehensive package of gun safety reforms. Voters decisively  
16 passed Proposition 63 (with 63% of the vote) in November 2016, including its  
17 provision generally prohibiting private possession of LCMs—the part of the law  
18 Plaintiffs currently are challenging. The Law Center therefore not only has  
19 significant expertise about firearm legislation broadly, but also has important  
20 knowledge and experience directly relevant to the legislation at the core of this case.

### 21 **III. ARGUMENT**

22 A “district court has broad discretion to appoint amici curiae.” *Hoptowit v.*  
23 *Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v.*  
24 *Conner*, 515 U.S. 472 (1995). The “classic role” of amici curiae is “assisting in a  
25 case of general public interest, supplementing the efforts of counsel, and drawing  
26 the court’s attention to law that escaped consideration.” *Miller-Wohl Co., Inc. v.*  
27 *Commissioner of Labor and Industry*, 694 F.2d 203, 204 (9th Cir. 1982). “District  
28 courts frequently welcome amicus briefs from nonparties concerning legal issues

1 that have potential ramifications beyond the parties directly involved or if the  
2 amicus has ‘unique information or perspective that can help the court beyond the  
3 help that the lawyers for the parties are able to provide.’” *Safari Club Intern. v.*  
4 *Harris*, No. 2:14-cv-01856-GEB-AC, 2015 WL 1255491 at \*1 (E.D. Cal. Jan. 14,  
5 2015), citing *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F.Supp.2d  
6 1061, 1067 (N.D. Cal. 2005). “The touchstone is whether the amicus is ‘helpful,’  
7 and there is no requirement ‘that amici must be totally disinterested.’” *California v.*  
8 *U.S. Dept. of Labor*, No. 2:13-cv-02069-KJM-DAD, 2014 WL 12691095 at \*1  
9 (E.D. Cal. Jan. 14, 2014), citing *Hoptowit*, 682 F.2d at 1260. This Court therefore  
10 has authority to permit the Law Center to participate as *amicus curiae*.

11 The Law Center brings unique information and perspective to the issues  
12 implicated in this constitutional challenge, and should be granted leave to submit a  
13 brief on those important issues. *See Missouri v. Harris*, No. 2:14-cv-00341-KJM-  
14 KJN, 2014 WL 2987284 at \*2 (E.D. Cal. Jul. 1, 2014) (“An amicus brief should  
15 normally be allowed when, among other considerations, the amicus has unique  
16 information or perspective that can help the court beyond the help that the lawyers  
17 for the parties are able to provide.”) (internal citation omitted). The Law Center’s  
18 *amicus* submission will offer, among other things, context for the California  
19 firearms law at issue; historical information about the use of LCMs and whether the  
20 use of these devices is protected by the Second Amendment; perspective on the  
21 public safety interests that California’s LCM restrictions advance; and details about  
22 the specific regulatory loophole sought to be closed with the enactment of  
23 Proposition 63. A number of courts, including a federal district court, have relied on  
24 similar information provided in the Law Center’s *amicus* briefs when deciding other  
25 cases involving firearms. *See, e.g., Peruta*, 824 F.3d at 943 (citing the Law Center’s  
26 *amicus* brief for examples of “law-abiding” weapons owners who “place the public  
27 safety in jeopardy”); *Mishaga v. Smith*, 136 F.Supp.3d 981, 996 (C.D. Ill. 2015)  
28 (citing information in the Law Center’s *amicus* brief as one of “[s]everal lines of

1 reasoning driv[ing] [the Court’s] conclusion”).

2 In addition, the Court should grant leave for the Law Center to submit an  
3 *amicus* brief because this case implicates important public interests, including public  
4 safety interests, with ramifications beyond the parties directly involved. For  
5 example, Proposition 63 is a ballot measure duly enacted by California voters to  
6 address serious public safety concerns, giving the voters a direct interest in the  
7 outcome of this case. Furthermore, the resolution of Plaintiffs’ Motion will involve  
8 the application of Second Amendment constitutional principles; this could have  
9 broader implications for other efforts, in California or elsewhere, to help reduce gun  
10 violence through the enactment of firearm safety legislation. *See California v. U.S.*  
11 *Dept. of Labor*, 2014 WL 12691095 at \*1 (leave to file *amicus* brief granted where  
12 case implicated constitutional issues and therefore had “potential ramifications  
13 beyond the parties directly involved”).

14 **IV. CONCLUSION**

15 For the foregoing reasons, the Law Center respectfully requests that the Court  
16 grant leave for the Law Center to participate as *amicus curiae* and submit a brief in  
17 connection with Defendant’s Opposition to Plaintiffs’ Motion for a Preliminary  
18 Injunction.

19 Respectfully submitted,

20 Dated: June 23, 2017

FARELLA BRAUN + MARTEL LLP

22 By:           /s Anthony Schoenberg          

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